

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,**
1101 K St NW,
Suite 201,
Washington, DC 20005

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY,**
245 Murray Lane SW
Washington, DC 20528

Defendant.

Civil Action No: _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) brings this action against Defendant Department of Homeland Security (“DHS” or “Defendant”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. DHS failed to respond to CREW’s FOIA appeal concerning information and records relating to former DHS Advisor for Policy Katharine Gorka’s involvement in the decision to revoke grants to combat white supremacy and white nationalism. CREW submitted its FOIA appeal to DHS on September 20, 2019, and DHS has since failed to respond to CREW’s appeal within the statutory deadline set forth in 5 U.S.C. § 552(a)(6)(ii).

2. This action seeks a declaratory judgment that Defendant is in violation of FOIA, and that Defendant has failed to conduct a sufficient search and has improperly withheld

responsive records. This action also seeks injunctive relief to compel Defendant to comply with FOIA and provide the requested records in their entirety.

Jurisdiction and Venue

3. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

4. Plaintiff CREW is a non-profit, non-partisan organization created under Section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials and agencies, and to ensuring the integrity of government officials and agencies. CREW seeks to empower citizens to have an influential voice in government decisions and in the government decision-making process through the dissemination of information about public officials and their actions. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of its mission and research, CREW uses government records made available to it under FOIA.

5. Defendant DHS is a federal agency within the meaning of FOIA, see 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. DHS has possession, custody, and control of records to which CREW seeks access.

Facts

6. Katharine Gorka (“Gorka”) was hired by DHS around January 2017 as an Adviser to the DHS Chief of Staff’s Office, and later served as an Adviser to the DHS Office of Policy.

7. Previously, Gorka was a contributing author to Breitbart, a website favored by white nationalists and white supremacists.

8. On January 13, 2017, then DHS Secretary Jeh Johnson announced that DHS had selected 31 proposals to support local efforts to counter violent extremism to receive \$10 million in grant funding appropriated by Congress in 2016.

9. Shortly after President Trump took office, on or around January 2017, then-DHS Secretary John Kelly ordered a review of the DHS Countering Violent Extremism (“DHS CVE”) Task Force, including a review of groups that had already been selected to receive funding.

10. Only two of the 31 projects were aimed at countering white nationalist groups: (1) Life After Hate, founded by former white supremacists who have renounced the racist ideology, was awarded \$400,000 to assist individuals seeking to leave hate groups, and (2) the University of North Carolina at Chapel Hill (“UNC-Chapel Hill”) was awarded around \$900,000 to counter jihadist and white supremacist recruiting. Neither grant was ever dispersed.

11. Prior to joining the Trump Administration, Gorka was highly critical of the DHS CVE Task Force, espoused opinions contrary to the majority of counterterrorism experts and proposed limiting its focus to radical Islamic extremism, rather than white supremacist groups.

12. While Gorka was a DHS official, DHS focused almost exclusively on combating Islamic extremism, while reducing or eliminating funding of programs to combat white supremacy. DHS even reportedly considered renaming the CVE Task Force to “Countering Islamic Extremism” or “Countering Radical Islamic Extremism.”

13. When DHS published a new list of CVE Task Force award recipients on June 23, 2017, neither Life After Hate nor UNC-Chapel Hill was included.

14. In sum, DHS revoked the only two CVE grants intended to counter white supremacist groups.

15. By email dated August 18, 2017, CREW requested from DHS under FOIA the following:

- (1) Copies of all calendars and/or other records from January 20, 2017 to the present reflecting meetings Katharine Gorka had, currently Adviser to the Department of Homeland Security's Office of Policy, and formerly Adviser to the DHS Chief of Staff's Office;
- (2) Documents reflecting the responsibilities and duties of Ms. Gorka, both in her current role as Adviser to the DHS Office of Policy, and in her previous role as Adviser to the DHS Chief of Staff's Office;
- (3) All communications from January 20, 2017 to the present between Ms. Gorka and George Selim, former DHS Director of the Office for Community Partnerships, and/or his then deputy David Gersten; and
- (4) Documents reflecting DHS' 2017 review of the Countering Violent Extremism (CVE) program, ordered by then-DHS Secretary John Kelly in January, as well as any other documents reflecting the decision to revoke CVE grant funding from the nonprofit organization, Life After Hate, and from the University of North Carolina at Chapel Hill.

16. By email dated August 18, 2017, DHS acknowledged that it received CREW's FOIA and assigned it Reference Number 2017-HQFO-01253. In its response, DHS stated

that “[d]ue to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request.”

17. Nearly two years later, on June 23, 2019, DHS responded to CREW’s request. DHS stated that it had conducted a search for documents within DHS’s Office of the Chief Information Officer (“OCIO”) and the Office of the Chief Human Capital Office (“OCHCO”) and found 693 pages responsive to CREW’s initial request, but released only eight pages of the records in their entirety. DHS invoked FOIA Exemptions 5, 6, 7(C) and 7(E) to withhold the remaining pages and records.

18. By email and letter dated September 20, 2019, CREW filed a timely administrative appeal with DHS. CREW explained that DHS’s response was inadequate because DHS failed to adequately and fully respond to CREW’s original FOIA request and provide relevant email attachments; improperly divided records; wrongly withheld portions of responsive records as non-responsive; and improperly withheld records under Exemptions 5 and 6.

19. For example, DHS only searched for records in the Office of the Chief Information Officer and the Office of the Chief Human Capital Office, yet CREW specifically requested documents that then-Secretary John Kelly had ordered be created. DHS did not search the Secretary’s Office for responsive records. Nor did DHS search the office that houses the CVE program, the Office for Targeted Violence and Terrorism Prevention.

20. Further, DHS improperly divided records by, for example, redacting responsive material and non-responsive material within the same email, and fully removing and failing

to disclose or provide email attachments. In many cases, these email attachments were simply ignored; they were withheld without the assertion of any FOIA exemption.

21. Further, DHS cited FOIA Exemption 5 to withhold records of final opinions and materials that did not expose the agency decision making process, and used the same exemption to withhold agency correspondence, despite the presence of John Barsa on such correspondence.

22. Mr. Barsa was not a federal government employee before May 8, 2017, and therefore, his presence on such correspondence would not permit the assertion of deliberate process nor qualify as “intra or “inter-agency” communication.

23. Additionally, DHS cited FOIA Exemption 6 to redact employee names in email chains and the names of event invitees and attendees in calendar entries. Yet, other names were not redacted, making the redactions improperly selective.

24. Moreover, DHS’s redactions, assuming the names of the individuals redacted were government employees, are contrary to legal precedent and were not supported by any arguments alleging reasonable harm in the disclosure of official names.

25. Finally, DHS cited FOIA Exemption 7(C) and 7(E) to protect information pertaining to law enforcement investigations or prosecutions. Yet, DHS failed to explain the basis for its belief that the disclosure of certain records could reasonably be expected to risk circumvention of the law.

26. By email dated September 20, 2019, DHS’s Office of FOIA Appeals and Litigation confirmed receipt of CREW’s appeal.

27. DHS had “20 working days after receipt” of the appeal to issue an appeal decision, pursuant to 6 CFR § 5.8.

28. Since DHS's email confirmation of receipt of the appeal, CREW has not received an appeal decision or any other communication.

Plaintiff's Claims for Relief

Claim I

DHS's Failure to Conduct an Adequate Search

29. CREW repeats, realleges, and reincorporates by reference paragraphs 1-28 as fully set forth herein.

30. CREW properly requested records within the custody and control of DHS pursuant to FOIA.

31. Defendant failed to produce relevant documents or communications known to exist.

32. Defendant failed to conduct an adequate search reasonably calculated to locate responsive records in violation of FOIA, 5 U.S.C § 552(a)(3), and Defendants' corresponding regulations, 6 C.F.R. §5.6(d)(3).

Claim II

DHS's Wrongful Withholding of Non-Exempt Records

33. CREW repeats, realleges, and reincorporates by reference paragraphs 1-28 as fully set forth herein.

34. Defendant wrongfully withheld responsive documents by incorrectly asserting and failing to explain its withholding under FOIA Exemptions 5, 6, 7(C), and 7(E).

35. Defendant therefore violated FOIA by wrongfully withholding non-exempt records.

Requested Relief

WHEREFORE, Plaintiff CREW respectfully requests that the Court:

1. Order Defendant to conduct searches for any and all responsive records to CREW's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the FOIA request;
2. Order Defendant to produce, by a date certain, any and all nonexempt records responsive to CREW's FOIA request and a *Vaughn* index of any responsive records withheld under a claim of exemption;
3. Declare that Defendant has failed to conduct a sufficient search and has improperly withheld responsive records;
4. Enjoin Defendant from continuing to withhold any and all nonexempt records responsive to CREW's FOIA request;
5. Grant CREW an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
6. Grant any other relief this Court deems appropriate.

Respectfully submitted,

By:



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Dated: November 22, 2019